

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PATRICIA CONWAY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:22-cv-01113-RLW
)	
MERCY HOSPITAL ST. LOUIS,)	
)	
Defendant.)	

**PLAINTIFF’S RESPONSES TO DEFENDANT MERCY HOSPITAL ST. LOUIS’
STATEMENT OF UNCONVERTED MATERIAL FACTS**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 4.01(E), Defendant Mercy Hospital St. Louis (“Mercy” or “Defendant”), through its undersigned counsel, hereby states for its Statement of Uncontroverted Material Facts as follows:

1. Mercy Health Ministries is a public juridic personality of the Roman Catholic Church. *Exhibit A*, Minder Declaration (§§ 9-11, Exhibits KM-3, KM-4, KM-5).

RESPONSE: Admit.

2. Mercy was founded by the Sisters of Mercy, a Roman Catholic religious order of nuns. *Exhibit A*, Minder Affidavit; (§§ 5-10, Exhibits KM-2, KM-3, KM-4, KM-19, KM-23).

RESPONSE: Admit.

3. Mercy Health Ministries was formed in accordance with the Canonical Statutes and is an entity for Canon Law purposes only, as it is not incorporated under the civil laws of any state. *Exhibit A*, Minder Declaration (§ 11, Exhibits KM-4, KM-5).

RESPONSE: Admit.

4. Mercy Health is the civil business entity and organization through which Mercy Health Ministries and the Catholic Church perform their health care services and mission work. *Exhibit A*, Minder Declaration (§ 12).

RESPONSE: Admit.

5. Mercy Hospital St. Louis is a d/b/a of Mercy Hospitals East Communities, which is a wholly-owned subsidiary of Mercy Health East Communities, which is a wholly-owned subsidiary of Mercy Health, which is a wholly-owned subsidiary of Mercy Health Ministries. *Exhibit A*, Minder Declaration (§§ 13-14).

RESPONSE: Admit.

6. Mercy Hospital St. Louis' mission statement states: "As the Sisters of Mercy before us, we bring to life the healing ministry of Jesus through our compassionate care and exceptional service."; *Exhibit A*, Minder Declaration (§ 39, Exhibit KM-19).

RESPONSE: Admit.

7. Mercy Health Ministries, Mercy Health, Mercy Hospital St. Louis, and all of Mercy Health's other wholly-owned subsidiaries are listed in the Official Catholic Directory, meaning that the listed entity can own property in the name of the Catholic Church and is considered tax exempt by the IRS based on its inclusion in the Official Catholic Directory. *Exhibit A*, Minder Declaration (§§ 17, 19, Exhibit KM-11, KM-34).

RESPONSE: Admit.

8. Mercy Health's Board of Directors consists of four nuns from the religious order of the Sisters of Mercy and is accountable to the Vatican Dicastery of the Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life. *Exhibit A*, Minder Declaration (§§ 22-25, 37, Exhibits KM-8, KM-9, KM-15, KM-16, KM-17, KM-35).

RESPONSE: Admit.

9. Mercy Health's Articles of Incorporation and Bylaws identify its purpose as continuing the healing acts of Jesus Christ in accordance with the doctrines and tenets of the Catholic Church. *Exhibit A*, Minder Declaration (¶¶ 21, 31, 37-39, Exhibits KM-8, KM-13, KM-14).

RESPONSE: Admit.

10. Mercy adheres to Ethical and Religious Directives for Catholic Health Care Services promulgated by the United States Conference of Bishops. *Exhibit A*, Minder Declaration (¶¶ 40-44, Exhibits KM-8, KM-20, KM-21).

RESPONSE: Admit.

11. Mercy Hospital St. Louis is a non-profit healthcare provider and facility, with tax-exempt status from the IRS, that receives monetary funding from the Catholic Church through its various Catholic Dioceses. *Exhibit A*, Minder Declaration (¶¶ 17-18, 26-29, Exhibits KM-8, KM-10, KM-11, KM-12).

RESPONSE: Admit.

12. Mercy's workplace is adorned with religious imagery and prayer occurs routinely and is also communicated over the public address system at least once a day. *Exhibit A*, Minder Declaration (¶¶ 45-50, 55-58, Exhibits KM-31, KM-32, KM-33).

RESPONSE: Admit..

13. The Missouri Commission on Human Rights has declared Mercy and all of its wholly-owned subsidiaries and affiliates to be organizations owned or operated by the Catholic Church and dismissed numerous discrimination charges on this bases, including the charge of discrimination filed by Plaintiff. *Exhibit A*, Minder Declaration (¶ 60, Exhibit KM-36).

RESPONSE: Admit.

Additional Material Facts that Can Be Disputed

14. Defendant Mercy Hospital St. Louis's doctors and nurse practitioners are not employees of Defendant, but are employed by a different sub-entity. Exhibit 1, Conway Affidavit.

¶3.

RESPONSE:

15. Defendant Conway worked for a for-profit sub entity of Mercy. *Id.*

RESPONSE:

16. The vast majority of employees at Mercy are not Catholic. *Id.* at 4.

RESPONSE:

17. During the training process for workers, no instruction is given about the Catholic religion. *Id.* at 5.

RESPONSE:

18. Defendant Mercy does not hold regular worship services for its employees. *Id.* at 12.

RESPONSE:

19. Defendant Mercy does not ask workers if they are Catholic during the interview process, and indeed never discussed religion with its employees until the vaccine mandate. *Id.* at ¶ 5.

RESPONSE:

20. During the years 2017-2019, Mercy's entities accumulated a total of \$3,207,180 in income unrelated to their non-profit status. Exhibit 4 at 2, ¶ 39 (\$61,529); Exhibit 3 at 2 ¶ 38 (\$94,051); Exhibit 2 at 1 ¶ 13 (\$934,593); Exhibit 7 at 1 ¶ 13 (\$3,014,741); Exhibit 6 at 1 ¶ 13 (\$2,886,178); Exhibit 5 at 1 ¶ 13 (-\$3,783,912).

RESPONSE:

21. In 2017, Mercy Hospitals East Communities reported a \$124,431 dollar profit from their lab services business and \$793,482 in gross income from their retail business. Exhibit 2.

RESPONSE:

22. In 2019, Mercy Hospital East Communities had for profit equity interests in at least 28 sub entities, including S-Corps it had an interest in or partnerships. Exhibit 7 at 8.

RESPONSE:

23. Mercy Hospital St. Louis employs individuals who do not believe in or practice Catholicism. Exhibit 1, Conway Declaration ¶¶4-5; Exhibit 3.

RESPONSE:

24. Mercy Hospital St. Louis holds itself out to the public as an equal employer that welcomes patients of all races, religions, ethnicities, political views, and genders. Exhibit 1, Conway Declaration ¶¶4-5; Exhibit 3.

RESPONSE:

25. The CMS Mandate requires healthcare providers like Mercy Hospital St. Louis establish and implement a process by which staff may request an exemption from COVID–19 vaccination requirements. Exhibit 4.

RESPONSE:

26. The CMS Mandate requires healthcare providers like Mercy Hospital St. Louis to have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, the facility's decision on the request, and any accommodations that are provided. Exhibit 4.

RESPONSE:

27. The CMS Mandate requires healthcare providers like Mercy Hospital St. Louis to document and evaluate requests for religious exemptions in accordance with applicable Federal law and each facility's policies and procedures. Exhibit 4.

RESPONSE:

28. Mercy Hospital St. Louis states in their religious exemption section of their Covid-19 Vaccine Policy that exemption applicants must upload their Religious Exemption Request Form, along with a certification form from their religious leader or other person who can attest the individual's religious beliefs are sincerely held, by August 15, 2021. Exhibit 1, Conway Declaration ¶¶6-7; Exhibit 5.

RESPONSE:

29. Mercy Hospital did not raise the organizational status as a religious corporation as a defense to Plaintiff Conway's unemployment compensation appeal. Exhibit 8.

RESPONSE:

30. Plaintiff Conway completed and electronically submitted her request for religious exemption in accordance with Defendant Mercy' Hospital St. Louis' religious exemption section of their Covid-19 Vaccine Policy. Exhibit 1, Conway Declaration ¶¶6-7; Exhibits 5-7.

RESPONSE:

31. Mercy Hospital St. Louis has granted religious accommodations for other employees who do not adhere by their Catholic beliefs. Exhibit 1, Conway Declaration ¶9.

RESPONSE:

32. Defendant Mercy Hospital failed to review Plaintiff's application for a religious accommodation upon submission. Exhibit 1, Conway Declaration ¶10, Exhibit 8.

RESPONSE:

33. The Appeals Tribunal for the Missouri Division of Unemployment held that Defendant Mercy Hospital failed to follow its own established policy to determine when a religious exemption to a vaccination would be granted. Exhibit 1, Conway Affidavit ¶10, Exhibit 8.

RESPONSE:

34. The Mercy witness at the hearing made no reference whatsoever to Mercy's putative religious corporation status. Conway Affidavit ¶ 12.

RESPONSE:

35. Mercy Hospital's failure to follow its own established Covid-19 Vaccine Policy constitutes a violation of the CMS Mandate. Exhibit 1, Conway Affidavit ¶¶6-9; Exhibits 4-7.

RESPONSE:

Respectfully submitted,

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CERTIFICATE OF SERVICE

COMES NOW Plaintiff Conway by and through undersigned attorney, and hereby certifies
that the forgoing was served via the courts e-filing system and email on this 6th Day of April 2023 to:

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